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13 UNITED STATES DISTRICT COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA
16
17 SAN FRANCISCO DIVISION
18

19 PAULA LABRIE, ALFREDO MACIAS,
20 PETER MILLMAN, TOM
21 CHORTABTIM, RAF SISON,

22 Plaintiffs,

23 vs.

24 UPS SUPPLY CHAIN SOLUTIONS,
25 INC.,

26 Defendant.
27
28

CASE NO. C08-03182 PJH

**DEFENDANT UPS SUPPLY CHAIN
SOLUTIONS, INC.'S REPLY IN SUPPORT
OF ITS MOTION TO DISMISS
PLAINTIFFS' FRAUD CLAIM**

DATE: October 1, 2008
TIME: 9:00 a.m.
DEPT: Courtroom. 3, 17th Floor
JUDGE: Hon. Phyllis J. Hamilton

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1 **I. INTRODUCTION**

2 In Opposition, Plaintiffs attempt to save their defective fraud claim by disavowing
3 the explicit language of their own First Amended Complaint (“FAC”), mischaracterizing the
4 alleged representations upon which they base their fraud claim, and citing inapposite legal
5 authority. But none of Plaintiffs’ transparent tactics can obscure the fact that their fraud claim is
6 predicated upon an alleged misrepresentation of *law*, and should be dismissed for failure to state a
7 claim upon which relief can be granted.

8 On August 11, 2005, the Superior Court of Sacramento issued a decision holding
9 that SCS¹ had misclassified sixteen of seventeen “employee” drivers as independent contractors.
10 SCS disagreed with the trial court’s decision because, in its opinion, the court applied the
11 incorrect legal test and did not consider all of the relevant evidence. Accordingly, SCS appealed
12 the trial court’s decision to the California Court of Appeal, Third District. In the interim period
13 between the trial court’s decision and the appellate court’s review, SCS did not convert its
14 independent contractors to employees because it strongly believed that the appellate court would
15 overturn the trial court’s decision. However, shortly after the appellate court disagreed with SCS
16 and affirmed the trial court’s holding in April 2007, SCS adjusted its California operations to
17 conform to the appellate court’s decision.

18 The gravamen of Plaintiffs’ fraud claim is that SCS “misrepresented” Plaintiffs’
19 legal status as independent contractors by asking them to sign Independent Contractor
20 Agreements in 2005,² during the interim period when the issue was pending before a California
21 appellate court. But as SCS pointed out in its Motion to Dismiss, this type of representation is not
22 actionable because it concerns an issue of *law* and *opinion*. SCS’s Independent Contractor
23 Agreement merely represented the company’s opinion that, at that time, its drivers were
24 independent contractors in the eyes of the law and it believed the appellate court would reach the

25 ¹ The 2005 decision applied to SonicAir, a SCS predecessor entity, but for purposes of this Reply
26 SCS does not distinguish between the two.

27 ² SCS did not ask any of the named plaintiffs to sign Independent Contractor Agreements later
28 than 2004 but, for purposes of this 12(b)(6) motion to dismiss, SCS does not dispute the facts as
they are alleged in Plaintiffs’ FAC.

1 same conclusion. SCS never misrepresented an issue of fact, and the First Amended Complaint
2 does not allege otherwise.

3 In Opposition, Plaintiffs try to overcome this insurmountable barrier to their fraud
4 claim with hollow semantics. They argue that the FAC does not allege that SCS misrepresented
5 their legal status as independent contractors. Instead, they assert that it misrepresented “the facts
6 underlying their independent contractor agreement,” and “the terms and conditions surrounding
7 the parties’ working relationship.” But, as the saying goes, “you can put all the lipstick you want
8 on a pig, but at the end of the day it’s still a pig.” As much as the Plaintiffs try to dance around
9 the central issue in their fraud claim and attempt to portray it as something other than it is, they
10 cannot escape the fact that it boils down to this: SCS represented to Plaintiffs its *opinion* that,
11 *according to California law*, Plaintiffs were independent contractors.

12 SCS explains below why — despite Plaintiffs’ attempt at opposition — Plaintiffs’
13 sixth cause of action for fraud should be dismissed without leave to amend.

14 **II. PLAINTIFFS’ OPPOSITION FAILS TO ESTABLISH THAT THE FIRST**
15 **AMENDED COMPLAINT ALLEGES AN ACTIONABLE**
16 **MISREPRESENTATION OF FACT**

17 In Opposition, Plaintiffs attempt to establish that the FAC alleges a
18 misrepresentation of fact in three ways. First, Plaintiffs argue that the misrepresentation at issue
19 is one of fact, yet they ignore the language in their own FAC declaring that their fraud claim is
20 predicated upon SCS’s alleged misrepresentation of their legal status as independent contractors.
21 Second, Plaintiffs argue — disingenuously — that their fraud claim is based upon SCS
22 misrepresenting the “level of control” it would impose over Plaintiffs’ work, but fail to identify a
23 single instance where SCS misrepresented a specific working condition. Third, Plaintiffs cite
24 inapposite legal authority that has nothing to do with fraudulent misrepresentations involving
25 opinions or matters of law. Thus, none of Plaintiffs’ efforts can save their fraud claim.

26 **A. Plaintiffs’ Attempt To Disavow The Explicit Language Of Their Own First**
27 **Amended Complaint Is Improper.**

28 Plaintiffs declare throughout their Opposition that they “do *not* base their fraud
claim on the allegation that SCS misrepresented their legal status by characterizing [them] as

independent contractors” (Opp. at 1:4-5),³ and accuse SCS of “misstate[ing] the pleadings.” (Opp. at 5:8.) However, the Court need look no further than the language of the FAC to see that Plaintiffs are incorrect: their FAC alleges that UPS misrepresented their legal status as independent contractors *verbatim*. Consider:

- In paragraph six of the FAC, Plaintiffs allege: “Despite UPS SCS’s control over virtually all material aspects of the employment relationship with its drivers . . . [it] continues to *misrepresent the status of these drivers, and to misclassify them as “independent contractors.”*” (FAC 2:19-25 (emphasis added)); and
- In paragraph seven of the FAC, Plaintiffs allege: “SCS’s . . . concealment and/or nondisclosure of the true nature of *the legal relationship between [SCS] and these drivers* [is] part of an on-going unfair, and/or unlawful and/or *fraudulent* business practice by [SCS].” (FAC 2:26-3:6 (emphasis added).)

Plaintiffs’ assertion that they allege “something very different” than SCS committed fraud by misrepresenting their legal status as independent contractors is simply not true. As much as the Plaintiffs would like to disavow the language in their FAC to avoid dismissal of their fraud claim, they cannot. In evaluating SCS’s motion to dismiss, the Court’s review is limited to the contents of the FAC. *Allarcom Pay Television, Ltd. v. Gen. Instrument Corp.*, 69 F.3d 381, 385 (9th Cir. 1995). Plaintiffs’ attempt to “explain” that their fraud claim is predicated upon misrepresentations other than those explicitly plead in their FAC is improper and should be disregarded.

B. Plaintiffs’ First Amended Complaint Does Not Identify A Single, Specific Factual Misrepresentation With Particularity.

Plaintiffs protest that their fraud claim is actually predicated upon SCS’s misrepresentations surrounding the specific terms and conditions of their work relationship, and “the result here should be no different than if Plaintiff Drivers alleged that the new Agreements

³ Plaintiffs’ Opposition is cited as “Opp. [page:line].” SCS’s Motion to Dismiss is cited as “MPA [page:line].” Plaintiffs’ First Amended Complaint is cited as “FAC [page:line].”

1 stated that they would be paid \$20.00 per hour, but that they were in reality only paid \$10.00 per
 2 hour.” (Opp. 7, fn 3.) But a review of the FAC reveals the emptiness of Plaintiffs’ argument.

3 The FAC does not allege a *single instance where SCS misrepresented a specific*
 4 *term and condition of Plaintiffs’ work relationship in the Agreement.* For example, the FAC does
 5 not allege that SCS misrepresented Plaintiffs’ pay rate, work hours, recording obligations,
 6 insurance requirements, appearance standards, route assignments, delivery deadlines, or any other
 7 working condition. Plaintiffs’ hypothetical example of an employer representing that it would
 8 pay its workers \$20.00 per hour where it actually paid them \$10.00 per hour merely highlights the
 9 defective nature of their argument: the FAC contains no analogous allegation.⁴ The house of
 10 cards falls.

11 The most specific misrepresentation Plaintiffs point to in support of their “working
 12 conditions” argument is stated in paragraph 69 of the FAC:

13 Likewise, in demanding that Plaintiffs and the Plaintiff Class sign
 14 these Agreements, [SCS] *implicitly represented that the level of*
 15 *control actually imposed by [SCS] over the manner and means of*
these drivers’ work would comport with the level of control in the
Agreements.

16 (FAC 17:26-18:1 (emphasis added).) But this vague, conclusory allegation cannot save
 17 Plaintiffs’ fraud claim.

18 It is axiomatic that a plaintiff pleading fraud must do so with particularity. Fed.
 19 Rule Civ. Proc. 9(b). Pleading fraud with particularity requires a plaintiff to articulate ““the time,
 20 place, and specific content of the false representations as well as the identities of the parties to the
 21 misrepresentation.”” *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004) (citation
 22 omitted); *see also Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985) (when fraud is alleged,
 23 “the absence of specification of any times, dates, places or other details of that alleged fraudulent
 24 involvement is contrary to the fundamental purposes of Rule 9(b)”). “To comply with Rule 9(b),
 25 allegations of fraud must be specific enough to give defendants notice of the particular

26 ⁴ Moreover, if Plaintiffs really believed that SCS’s written agreement materially misrepresented
 27 the specific terms and conditions of their work relationship they would have plead a breach of
 28 contract claim. They did not.

misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong.” *Bly-Magee v. Cal.*, 236 F.3d 1014, 1019 (9th Cir. 2001) (citation and internal quotation marks omitted). Here, Plaintiffs do not meet this standard and flout Rule 9(b)’s particularity requirement.

Paragraph 69 does not identify any specific factual representations SCS made in the Agreements concerning the “level of control” it intended to impose over Plaintiffs’ working conditions, or explain how such representations were false. *In re GlenFed Inc. Sec. Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994) (“The plaintiff must set forth what is false or misleading about a statement, and why it is false.”); *Blake v. Dierdorff*, 856 F.2d 1365, 1369 (9th Cir. 1988) (holding that 9(b) requires “specific descriptions of the representations made, [and] the reasons for their falsity”). It merely states Plaintiffs’ unsubstantiated legal conclusion that SCS exercised more control over its drivers than the law permits in an independent contractor relationship.⁵ SCS — and this Court — are left to guess at what “extra-contractual controls” and misrepresentations Plaintiffs are talking about.

C. Plaintiffs’ Distinction Between Representations About Their Legal Status As Independent Contractors, And Representations About The Facts “Surrounding” Their Status As Independent Contractors, Is Immaterial.

In any event, Plaintiffs’ argument that the FAC alleges SCS misrepresented the facts surrounding the parties’ work relationship rather than their legal status as independent contractors is beside the point. In its Motion to Dismiss, SCS pointed out that this Court considered and rejected an analogous argument in *Cruz v. Dollar Tree Stores, Inc.*, No. 07-2050 SC, 2007 WL 2729214, at *3 (N.D. Cal. Sept. 18, 2007). (MPA 5:19-7:8.)

In *Cruz*, Plaintiffs worked for Defendant as Store Managers and alleged that Defendant committed fraud by representing that they were exempt from overtime laws when they were in fact non-exempt. *Id.* at *1. Defendant moved to dismiss on the grounds that the representation at issue — the Plaintiffs’ exempt status — concerned an issue of law. *Id.* at * 2. In

⁵ Of course, in ruling on a motion to dismiss, the Court need not consider conclusory allegations of law, mere legal conclusions, unwarranted deductions of fact, or unreasonable inferences. *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000).

1 opposition, the Plaintiffs argued that Defendant had misrepresented the underlying facts
 2 surrounding their working relationship. *Id.* at *3. Specifically, they claimed that Defendant had
 3 classified them as managers yet required them to perform mostly non-managerial tasks. *Id.* This
 4 Court rejected Plaintiffs' argument and granted Defendant's motion to dismiss because "the
 5 central issue" in the fraud claim was a legal matter: the classification of Plaintiffs' employment
 6 status. *Id.*

7 Just as the plaintiffs in *Cruz* tried to avoid dismissal by re-characterizing
 8 Defendant's alleged misrepresentation as one concerning the "facts" surrounding their
 9 employment classification, here Plaintiffs attempt to save their fraud claim by dancing around the
 10 "central issue." But Plaintiffs' smoke-and-mirrors semantics cannot obfuscate the central issue
 11 here: Plaintiffs allege that SCS represented they were independent contractors, not employees,
 12 and thus not entitled to receive various benefits guaranteed to employees under California and
 13 Federal law. The alleged misrepresentation concerns an issue of law, not fact.

14 **D. Plaintiffs' Assertion That "Employment Status Is A Question Of Fact" Is**
 15 **Incorrect.**

16 Plaintiffs attempt to save their fraud claim by stating that as a matter of law "[t]he
 17 determination (employee or independent contractor) is one of fact." (Opp. 7:19-20.) Plaintiffs
 18 support this proposition by citing several inapposite cases holding that courts engage in a fact-
 19 based inquiry when evaluating whether an individual is an employee or independent contractor.
 20 But none of the cases Plaintiffs cite implicate fraudulent misrepresentation claims.⁶ In other

21 ⁶ Plaintiffs cite several cases where courts engaged in a "fact-based inquiry" while evaluating
 22 whether an individual is an employee or an independent contractor. However, none of the cases
 23 hold that an employer's representation about an individual's legal status as an
 employee/contractor encompasses an issue of fact in the context of a fraud claim.

24 In *Estrada*, FedEx appealed the trial court's finding that FedEx drivers were employees and not
 independent contractors. *Estrada v. FedEx Ground Package Sys., Inc.*, 154 Cal. App. 4th 1, 11
 25 (2007). For purposes of deciding the nature and scope of its appellate review, the Court
 concluded that the determination of whether the FedEx drivers were employees or contractors
 26 was "one of fact and thus must be affirmed if supported by substantial evidence." *Id.* The Court
 did not hold that representations about an individual's status as an independent contractor may
 form the basis of a fraud claim.

27 In *Air Couriers*, "[t]he trial court found, as a matter of law, that [defendant]'s drivers were not
 28 independent contractors." *Air Couriers Int'l v. Employment Dev. Dep't*, 150 Cal. App. 4th 923,

(Continued . . .)

1 words, Plaintiffs argue that because courts consider facts when using the common law
 2 employment test to distinguish between employees and independent contractors, representations
 3 concerning an employee or independent contractor's legal status must encompass an issue of fact
 4 for purposes of a fraud claim. Plaintiffs' nonsensical argument is a red herring and misrepresents
 5 the law.

6 Typically, a representation concerning an individual's status as an employee or
 7 independent contractor concerns an unactionable issue of law, not fact. *See Travis v.*
 8 *Knappenberger*, 204 F.R.D. 652, 659 (D. Or. 2001) ("A representation to someone that he or she
 9 is an independent contractor rather than an employee is a representation as to an issue of law, not
 10 of fact."); *Barnhart v. New York Life Ins. Co.*, 141 F.3d 1310, 1313 (9th Cir. 1998) (affirming
 11 grant of summary judgment to employer regarding employee/independent contractor issue).
 12 Statements of law are not actionable in most cases because they are regarded as expressions of
 13 opinion, which are generally not actionable in fraud even if they are false. *Miller v. Yokohama*
 14 *Tire Corp.*, 358 F.3d 616, 621 (9th Cir. 2004).

15 Therefore, where a plaintiff brings a fraud claim predicated upon a
 16 misrepresentation of law the key inquiry is whether the statement at issue is an actionable

17 937 (2007). On appeal, Defendant challenged the trial court's finding. The appellate court held:
 18 "The trial court employed the proper legal standard in evaluating the evidence produced at trial"
 19 and affirmed the lower court's holding. *Id.* The Court did not address whether representations
 about an individual's status as an employee or independent contractor may form the basis of a
 fraud claim.

20 In *Toyota Motors*, the Court analyzed whether the defendant delivery driver was an independent
 21 contractor or employee for purposes of determining whether the defendant pizza establishment
 22 owner could be held liable for damages caused by the delivery driver's collision with plaintiff.
Toyota Motor Sales U.S.A., Inc. v. Superior Court, 220 Cal. App. 3d 864, 877-78 (1990). The
 case did not involve a fraud claim.

23 In *Santa Cruz Transportation*, the Court considered whether a taxi driver was an independent
 24 contractor or an employee entitled to receive unemployment benefits upon termination. *Santa*
Cruz Transp., Inc. v. Unemployment Ins. Appeals Bd., 235 Cal. App. 3d 1363, 1367 (1991). The
 Court did not address whether representations about an individual's status as an employee or
 independent contractor may form the basis of a fraud claim.

25 Finally, in *Friendly Cab Company*, the Ninth Circuit held that taxi drivers were employees and
 26 entitled to representation for collective bargaining purposes. *Nat'l Labor Relations Bd. v.*
Friendly Cab Co., 512 F.3d 1090, 1096 (9th Cir. 2008.) The Court did not hold that
 27 representations about an individual's status as an independent contractor may form the basis of a
 28 fraud claim.

1 statement of fact, or an unactionable statement of opinion. *Travis*, 204 F.R.D. 652, 659 (D. Or.
 2 2001); RESTATEMENT (SECOND) OF TORTS § 545. The Second Restatement of Torts provides
 3 guidelines for making this determination:

4 A statement of law may be a statement of fact or a statement of
 5 opinion. Thus a statement that a particular statute has been enacted
 6 or repealed, or that a particular decision has been rendered by a
 7 court upon a particular state of facts is a statement of fact. On the
 8 other hand, if all the pertinent facts are known and there is no
 9 misrepresentation of the existence or nonexistence of a pertinent
 statute or judicial decision, the statement of the legal consequences
 of those facts is a statement of opinion as to what a court would
 determine to be the legal consequences of the facts if the matter
 were litigated.

10 *Id.* cmt. a. Here, the FAC does not allege that SCS misrepresented the existence of a statute or
 11 judicial decision. Instead, the FAC alleges that SCS misrepresented Plaintiffs' legal status as
 12 independent contractors. Thus, according to the FAC, SCS represented its *opinion* that if the
 13 matter were litigated and a court considered the facts surrounding the parties' working
 14 relationship it would conclude Plaintiffs were independent contractors. The representation at
 15 issue is thus a statement of *law* and *opinion*, and cannot support Plaintiffs' fraud claim.

16 Because the language of the FAC makes clear that Plaintiffs' fraud claim is
 17 predicated upon a misrepresentation of law and opinion, the Court should dismiss Plaintiffs' sixth
 18 cause of action for failure to state a claim upon which relief can be granted.

19 **III. THE FIRST AMENDED COMPLAINT DOES NOT ALLEGE THAT SCS** 20 **PURPORTED TO HAVE EXPERT KNOWLEDGE CONCERNING** **EMPLOYMENT LAW**

21 Plaintiffs contend that even if the Court finds that their FAC pleads a misstatement
 22 of legal opinion, their fraud claim is actionable because SCS "purported to have expert
 23 knowledge." (Opp. 9:11-13.) Plaintiffs are incorrect, however, because SCS did not hold itself
 24 out as an expert on employment law and the FAC does not include any such allegation.

25 It is true that courts recognize four exceptions to the general rule that fraud cannot
 26 be predicated upon a misrepresentation of law. *Miller v. Yokohama Tire Corp.*, 358 F.3d 616,
 27 621 (9th Cir. 2004). Where the party making the misrepresentation (1) purports to have special
 28 knowledge; (2) stands in a fiduciary or similar relation of trust and confidence to the recipient;

(3) has successfully endeavored to secure the confidence of the recipient; 4) or has some other special reason to expect that the recipient will rely on his opinion, misrepresentations of law may result in actionable fraud. *Id.*

Plaintiffs' reliance on the "special knowledge" exception is misplaced because it only applies in situations where the party making the misrepresentation holds himself or herself out to be specially qualified on the subject of the misrepresentation. *Seeger v. Odell*, 18 Cal. 2d 409, 415 (1941) (exception applied where attorney told plaintiffs he had superior knowledge of many facts concerning their land and applicable law, and induced them to enter into a real estate transaction); *Regus v. Schartkoff*, 156 Cal. App. 2d 382, 388-89 (1957) (exception applied where insurance adjuster told plaintiff that her claim would be barred in three years even though he routinely handled similar claims and knew her claim would be barred in one year). In *Pacesetter Homes, Inc.*, the Court explained the scope of the superior knowledge exception:

"Superior knowledge" in the context of fraudulent misrepresentation has become a term of art. It contemplates more than the possession by one party to a bargain of a greater acumen than is possessed by the other party. The concept has been applied primarily in situations where assumed knowledge possessed by the party expressing the fraudulent opinion is a motivation to the other to enter into the transaction, or where the defendant has held himself out as particularly knowledgeable.

Pacesetter Homes, Inc. v. Brodtkin, 5 Cal. App. 3d 206, 212 (1970).

The FAC does not allege that SCS represented to Plaintiffs that it had special or expert knowledge regarding employment laws or Plaintiffs' legal status as independent contractors.⁷ Plaintiffs thus cannot avail themselves of the superior knowledge exception. Moreover, even if it could be inferred from the FAC that Plaintiffs allege SCS had "superior

⁷ Moreover, the FAC does not and cannot allege that SCS had exclusive access to facts that were unavailable to Plaintiffs. To the extent Plaintiffs argue that SCS had "special knowledge" that Plaintiffs were independent contractors because of the Sacramento Superior Court's 2005 interim decision, Plaintiffs had equal access to the Court's decision. The Court issued a *public* Statement of Decision on August 11, 2005. (FAC 16:21-23.)

1 knowledge” by virtue of being a sophisticated employer, the Ninth Circuit rejected an analogous
2 argument in *Miller*.⁸

3 In *Miller*, the plaintiff alleged that the defendant employer falsely represented to
4 him and other employees that they were not entitled to overtime because they were salaried.
5 *Miller*, 358 F.3d at 621. He contended that because he was not an attorney and was not familiar
6 with the law or regulations concerning entitlement to overtime pay, he trusted and placed
7 confidence in his employer who he argued possessed superior knowledge concerning his status
8 and his right to receive overtime. *Id.* The Court held that the superior knowledge exception did
9 not apply because there was no basis for the court to believe that an employer has any special
10 knowledge regarding wage and hour laws. *Id.* Thus, as a matter of law, Plaintiffs cannot avail
11 themselves of the superior knowledge exception on the basis that SCS was their employer and
12 they did not have extensive knowledge of employment law.

13 **IV. THE COURT SHOULD DISMISS PLAINTIFFS’ FRAUD CLAIM WITHOUT** 14 **LEAVE TO AMEND**

15 In situations where a claim cannot be saved by amendment, it is proper for a court
16 to deny leave to amend. *Eminence Capital LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.
17 2003) (holding that dismissal without leave to amend is improper unless the complaint could not
18 be saved by amendment). Here, history proves that Plaintiffs cannot cure the flaws in their fraud
19 claim. Counsel for SCS met and conferred with Plaintiffs’ counsel on July 29, 2008, informed
20 him that Plaintiffs’ fraud claim is deficient because it alleges a misrepresentation of law, and
21 requested that Plaintiffs voluntarily dismiss the claim. Plaintiffs’ counsel declined and, instead,
22 filed an FAC to address the deficiency in the fraud claim. Plaintiffs have thus already amended
23 their fraud claim to no avail and allowing Plaintiffs to amend their complaint again would merely
24

25 ⁸ In reviewing the Opposition, it is unclear whether Plaintiffs argue that SCS had superior
26 knowledge of employment law and Plaintiffs’ legal status as independent contractors, or of the
27 company’s “intent to exercise more control over the Plaintiffs’ work than it expressed in the
28 agreements.” If Plaintiffs’ assert the later, their argument is absurd. Essentially, in Plaintiffs’
view the superior knowledge exception would apply to *every* situation because the party making a
representation always has superior knowledge of his or her own intent.

1 result in undue delay and unnecessary litigation.

2 **V. CONCLUSION**

3 The crux of Plaintiffs' fraud claim is that SCS made them sign Independent
4 Contractor Agreements expressing the company's opinion that, in the eyes of the law, Plaintiffs
5 were independent contractors. In short, Plaintiffs' claim is predicated upon a representation
6 concerning an issue of law. Controlling precedent is clear that representations about opinions
7 and/or issues of law are not actionable. No matter how Plaintiffs twist, spin, re-characterize, or
8 re-phrase their fraud claim, it is not actionable. Consequently, SCS respectfully requests that the
9 Court grant its motion and dismiss with prejudice Plaintiffs' sixth cause of action for fraud.

10 DATED: September 17, 2008 PAUL, HASTINGS, JANOFSKY & WALKER LLP

11
12 By: /s/ MICHAEL M. PFYL
13 MICHAEL M. PFYL

14 Attorneys for Defendant
15 UPS SUPPLY CHAIN SOLUTIONS, INC.
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